

REMARKS

Claim 1 has been amended to incorporate the limitations of claim 2, which has been cancelled. Independent claims 1 and 2 also have been amended to better define the claimed invention and better distinguish the claimed invention from the prior art. Additionally, the dependency of dependent claims 3-6 has been amended. No new matter has been entered.

Considering first the rejection of claims 1 and 9 as anticipated by Ramirez or by EP '980, independent claims 1 and 9, as amended, are both directed to a naturally brewed alcoholic malt beverage to which caffeine is added during the normal brewing process. Ramirez teaches adding caffeine to a non-alcoholic beverage following the brewing process. Thus, Ramirez is distinguished on that basis alone. And, EP '980 teaches a normally brewed beer to which several additional ingredients, carbonated water, flavored plant extracts, citric acid, sugar, soda water, caffeine, vanilla and coloring are all added following the brewing process. Thus, on that basis alone neither claim 1 nor claim 9 can be said to be anticipated by Ramirez or by EP '980.

Turning to the rejection of dependent claims 2-8 and 10-16 as being unobvious from Ramirez in view of Brenner and Redbull, claim 2 has been cancelled, thus rendering moot the rejection of that claim. As to the remaining claims, the primary reference Ramirez is a non-alcoholic beer in which ethanol is removed by extraction, and caffeine then added along with a variety of other components. Thus, Ramirez cannot be said to be a naturally-brewed alcoholic beverage as required by Applicant's claimed invention. Moreover, Ramirez specifically teaches additional of caffeine, along with several other ingredients after the beer is brewed and subjected to an extraction to remove the alcohol. Thus the primary reference Ramirez is quite different from Applicant's claimed invention.

HAYES SOLOWAY P.C.
3450 E. SUNRISE DRIVE
SUITE 140
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567

It is not seen that either of the secondary references alone or in combination supply the missing teachings of Ramirez to achieve or render obvious claims 1 and 9 or any of the claims dependent thereon. Brenner, which is cited as teaching a foam improvement composition that could be added to a beverage at any stage before bottling is a conventional alginate and is similar to the acknowledged prior art discussed in the paragraph bridging pages 2-3 of Applicant's specification. As noted in Applicant's sworn specification, alginates, while improving foaming properties adversely affect taste and/or increase turbidity. Moreover, it is submitted that the fact that one foaming agent, alginate, may improve foaming at different stages, does not mean that another material not previously known to be a foaming agent, i.e., caffeine, advantageously may be added to a naturally brewed alcoholic malt beverage to improve foaming as in Applicant's claims. It must be remembered brewing is a complex multi-stage process involving natural ingredients which are by their nature somewhat unpredictable.

Redbull, which has been cited for the proposition that caffeine may be contained in many foodstuffs is acknowledged as so teaching. However, noticeably missing from Redbull is a suggestion that caffeine be added to a naturally brewed alcoholic malt beverage as required by Applicant's claims.

Accordingly, in view of the contraindications and distinctions in the prior art, it is submitted that no combination of Ramirez, Brenner and Redbull would achieve or render obvious claim 1 or claim 9 or any of the claims dependent thereon. Thus, the rejection of claims 2-8 and 10-16 as obvious from Ramirez in view of Brenner and Redbull is in error.

Turning to the rejection of dependent claims 7, 8, 15 and 16 as obvious from Ramirez in view of Redbull, claim 7 and 8 are directly or indirectly dependent on claim 1, and claims 15 and 16 are directly or indirectly dependent on claim 9. The deficiencies of the primary

HAYES SOLOWAY P.C.
3450 E. SUNRISE DRIVE
SUITE 140
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567

reference Ramirez vis a vis claim 1 and 9 is discussed above. It is noted *supra*, Redbull does not even discuss a malt beverage. Accordingly, no combination of Ramirez and Redbull reasonably could be said to achieve or render obvious claim 1 or claim 9 or claims 7, 8, 15 and 16, which depend directly or indirectly thereon, respectively.

Having dealt with all the objections raised by the Examiner, the Application is believed to be in order for allowance. Early and favorable action are respectfully requested.

In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account Number 08-1391.

Respectfully submitted,



Norman P. Soloway
Attorney for Applicant
Reg. No. 24,315

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on January 30, 2006, at Tucson, Arizona.

By M. Anne Dubé

NPS:sm/dd

HAYES SOLOWAY P.C.
3450 E. SUNRISE DRIVE
SUITE 140
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567